because of the benefits which this Commission confers on ESPs as opposed to telecommunications carriers.

For example, Qwest Communications has announced aggressive plans for its new Internet protocol voice service, which appears predicated on the continued existence of the ESP exemption. The service, priced at 7.5 cents-per-minute (24 hours a day and 7 days a week), will be available in approximately 25 cities by the middle of 1998.[54] In March, ICG announced that it too would provide Internet protocol telephony service, priced at 5.9 cents-per-minute for on-net calls and 7.9 cents-per-minute for calls terminating on an incumbent LEC's network, in 166 cities by the end of 1998.[55] It would appear that a significant motivating factor driving voice on the Internet is the fact that voice on the Internet can originate and terminate interstate calls through local exchange switching facilities without the ESP paying for all of these facilities, while carriers must pay either access charges or the price for unbundled network elements. In other words, the ESP exemption already is driving market behavior that quite possibly would be irrational in the absence of the exemption. Such substitution of regulatory incentives for market incentives is utterly inimical to the purpose and intent of the 1996 Act. No matter how the problem is fixed, the current exemption is potentially destructive and must be eliminated.

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[54] "First State-of-the-Art Native IP Network to Deliver Telephony Service," February 10, 1998; url: http://www.quest.com/press/021098a.html.

[55] Communications Daily, March 12, 1998.

V. THE COMMISSION SHOULD NOT EXPAND ITS EXISTING ONA UNBUNDLING REQUIREMENTS

A. The Commission Has Complied With The Ninth Circuit's Remand Order By Identifying Compelling Reasons For Retaining The Current Level Of ONA Unbundling

On remand, the Ninth Circuit Court of Appeals ordered the Commission to provide an explanation of how its modified ONA safeguards are an adequate substitute for structural separation.[56] The Court did not mandate any particular level of ONA unbundling -- to the contrary, the Court noted the benefits of integration and the success of the Commission's ONA safeguards.[57] Thus, all that is required from the Commission is a further explanation of any differences between "fundamental unbundling" and the rules ultimately adopted by the Commission.

In the Computer III Further Notice, the Commission correctly determined that the 1996 Act, as well as other factors, should alleviate any concern about whether the level of unbundling required under ONA provides sufficient protection against access discrimination.[58] First, as the 1996 Act intended, there has been a dramatic increase in the number of competitors providing the basic network services that ESPs previously could obtain only from incumbent LECs.[59] Because local telecommunications services are important inputs to information services, ESPs "are uniquely positioned to benefit from an increasingly competitive local

[56] California v. FCC, 39 F.3d at 972-30, 933.

[57] Id. at 925, 927.

[58] Computer III Further Notice ¶ 34.

[59] Id. ¶ 33.

exchange market."[60] ESPs have the option of entering into partnering or teaming arrangements with carriers that have interconnection rights under Section 251 of the 1996 Act, or they may obtain certification as telecommunications service providers in order to receive direct benefits under Section 251.[61]

Second, other regulatory and market-based developments, such as the Expanded Interconnection proceeding, help to further protect ESPs against discrimination by facilitating competition in the provision of basic network services.[62] In particular, ESPs now have the ability to utilize interstate special access, transport and tandem switched transport services offered by competitive providers, which further helps to protect ESPs against access discrimination.

Third, the level of competition within the enhanced services market has exploded as new competitive ESPs continue to pour into the market.[63] The ESP industry is, by any measure, thriving under the Commission's existing non-structural safeguard regime. As previously discussed, the revenues for the ESP market grew at an annual rate of over 18% between 1991 and 1994, with a value of over $25.4 billion in 1994. The continuation of this ESP growth is reflected in the fact that approximately 500 ESPs have requested to be on U S WEST's distribution list for its ONA newsletter.[64]

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[60] Id.

[61] Id.

[62] Id. ¶ 35.

[63] Id. ¶¶ 29-36.

[64] The distribution list for U S WEST's ONA newsletter primarily consists of ESPs, although there are also some equipment vendors on the list.

Further, as the Commission itself recognized, the "[t]he phenomenal growth of the Internet over the past several years illustrates how robustly competitive one sector of the information services market has become."[65] Indeed, it is estimated that there are currently around 4,500 ISPs, and this number is expected to grow to 5,000 by the end of 1998.[66] Moreover, a study published by the consulting firm of Maloff Group International estimates that Internet revenues are growing at a rate of 25 percent per month.[67] The Internet market is expected to hit $10.8 billion by April 1998 and exceed $14 billion by the fourth quarter of 1998.[68] While growth of the Internet, and therefore the ISP market, has primarily resulted from new Internet subscribers, future growth is seen to be in part driven by the use of new technologies and applications, such as faxing and video applications.[69]

The nature of ISPs range from small local mom-and-pop operations, to regional providers, to larger national businesses such as IBM, Worldcom (which owns UUnet Technologies and recently purchased CompuServe's and American Online's network services), AT&T, GTE, Qwest Communications (which now owns Colorado SuperNet), Earthlink Network, PSINet, Microsoft Network, Prodigy,

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[65] Id. ¶ 36.

[66] See USA Today, Arlington, Final Edition, Sep. 4, 1997.

[67] In comparison, the Maloff Group estimated that the ISP market was only $50 million and $150 million in 1995. Between April and October 1996, the ISP market grew from $1.85 billion to $8.4 billion.

[68] "Internet access explodes in '97 - Study reveals ISP marketplace hit $8.4B in October," Computer ResellerNews, Issue 762, Nov. 10, 1997.

[69] "Fatter Pipes Needed to Keep Internet Smoking," Computer ResellerNews (Wylie Wong), Jan. 29, 1998 as printed in TechWeb News.

Netcom, and Concentric. Some ISPs wholesale their services to other ISPs who essentially resell them to retail Internet subscribers. These wholesale services, which may account for up to 20% of the total revenue,[70] include access, Web hosting, and various value-added services.

As of 1996, the *Yankee Group* estimated that 15.3 million U.S. households were connected to the Internet. This figure is expected to reach 26.0 million households by the end of 1998, a 70% increase.[71] In addition, the *Yankee Group* predicted that the consumer on-line subscriber base would grow 33% per year and the business base 79% per year for the period from 1995 to 2000.[72] With the advent of the World Wide Web, the business market has established about 80,000 Web sites, accounting for over 8.8 million pages of content.[73]

In light of these astounding statistics, the inescapable conclusion is that the ESP/ISP market has flourished under the Commission's existing non-structural safeguard regime. There is no policy or legal basis for expanding the current level of ONA unbundling. To the contrary, all indications are that the Commission's current ONA non-structural safeguards are working extremely well and are sufficient to prevent discrimination.

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[70] "Wholesale Internet Services: The ISP Business Market," The Yankee Group, Volume #: 3 Issue #: 11, dated Sep. 1997.

[71] "The Internet Commerce Report," The Yankee Group, Volume #: Issue #: 2, dated Nov. 1997.

[72] "Internet Service Provider Market Analysis," The Yankee Group, Volume #: 1 Issue #: 102, dated July 1996.

[73] Id.

B. The Commission's Section 251 Unbundling Requirement Must Correspond To The Obligations Assumed By The Requesting Carrier

Section 251 gives "telecommunications carriers" the right to request interconnection, access to unbundled network elements, and resale.[74] Therefore, pure ESPs that do not also provide telecommunications services are not accorded such rights under Section 251. However, despite this limitation, pure ESPs are able to obtain the benefits of Section 251 by entering into a partnership arrangement with a competitive LEC or by expanding its offerings to include telecommunications services.

The Commission seeks comment on whether some or all of the rights accorded to requesting telecommunications carriers pursuant to Section 251 should be extended to pure ESPs.[75] U S WEST believes that the Commission's Section 251 unbundling requirement must correspond to the obligations assumed by the requesting service provider. Consistent with this fundamental principle, pure ESPs cannot obtain access to unbundled elements under Section 251 without satisfying the corresponding obligations of telecommunications carriers.

The concept of "enhanced services" was developed nearly twenty years ago, and was meant to establish a "bright line" between regulated carrier services and other computerized applications which acted on common carrier transmission services but which were not part of the actual common carrier function itself.[76]

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[74] 47 U.S.C. § 251(c).

[75] Computer III Further Notice ¶ 96.

[76] Phase II Final Order, 77 F.C.C.2d 384 (1980).

Enhanced services were not common carrier in nature, were not regulated by the Commission, and originally were preemptively deregulated (although that preemption was subsequently reversed by the Ninth Circuit Court of Appeals).[77]

ESPs, as non-carriers, do not share the carrier duty to serve the public on a non-discriminatory basis -- and can conduct their business based on the normal business criteria which guide business people in the deregulated world. In recognition of this absence of a duty to serve, Congress has exempted ESPs from contributions to the high-cost universal service fund.[78] ESPs are treated as end users for at least some regulatory purposes, and are able to use local exchange switching facilities for origination and termination of interstate calls without paying the interstate charges for such calls which are assessed on carriers.[79] Thus, pure ESPs simply have no duty to serve or to satisfy the other telecommunications carrier obligations that are, with good reason, prerequisites to obtaining access to unbundled elements under Section 251.

VI. U S WEST SUPPORTS THE COMMISSION'S PROPOSAL TO ELIMINATE THE CEI PLAN FILING REQUIREMENT

U S WEST supports the Commission's proposal to eliminate the requirement that BOCs file CEI plans and obtain Bureau approval for those plans prior to

[77] See Computer III Phase I Order, 104 F.C.C.2d at 1126-28; Phase I Recon. Order, 2 FCC Rcd. at 3061-63; Phase II Order, 2 FCC Rcd. at 3100-02. See also California v. FCC, 905 F.2d at 1239-45.

[78] 47 U.S.C. § 254(d).

[79] See In the Matter of Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, 4 FCC Rcd. 1, 167-68 ¶ 318 (1988) ("ONA MO&O").

providing new enhanced services.[80] The Commission reasoned correctly that CEI plans are no longer necessary to protect against access discrimination, now that BOCs have been providing enhanced services pursuant to approved ONA plans for a number of years.[81] These ONA plans provide a sufficient level of protection against access discrimination. Because of the anti-competitive effects that CEI plans have in the market for enhanced services, the Commission should dismiss all pending CEI matters and immediately remove the burden imposed by existing CEI plans.

The Commission itself has recognized that the "substantial administrative costs" associated with the preparation and agency review of CEI plans outweigh their utility as a purely redundant regulatory safeguard.[82] The time involved in filing and preparing CEI plans merely delays the introduction of new enhanced services, which places BOCs at an incredible disadvantage when competing in the highly competitive market environment of enhanced services. Such delays also are extremely harmful to the public interest because they deprive customers of access to innovative new technologies.

In April 1994, for example, U S WEST filed a petition for waiver of the CEI equal access parameter for its proposed Electronic White Pages Reverse Search service which received widespread industry support. Nevertheless, the Commission did not grant U S WEST a waiver for reverse-search capability until November

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[80] Computer III Further Notice ¶ 61.

[81] Id.

[82] Id. ¶ 63.

1995.[83] When this type of delay occurs, it means that customers are being deprived of new services or U S WEST's competitors have been given an insurmountable head start in the marketplace due solely to bureaucratic red tape. Neither result is desirable.

Further, the CEI plan filing requirement should be eliminated due to the severe anti-competitive consequences of forcing U S WEST and other BOCs to reveal their product deployment plans in advance of market entry. It is impossible for U S WEST to be truly competitive in the marketplace when its competitors have the advantage of knowing what enhanced services it intends to deploy, and to a great degree, how such services will be provisioned. In addition, the information contained in CEI plans gives U S WEST's competitors an invaluable opportunity to identify the structure and potential price of the new service offering. Armed with this useful information, competitors have an unfair opportunity to beat U S WEST to market with a rival product, which stifles U S WEST's incentive to develop new enhanced services.

VII. THE COMMISSION SHOULD STREAMLINE ITS EXISTING CEI PARAMETERS, COMPUTER III NON-STRUCTURAL SAFEGUARDS AND ONA REPORTING REQUIREMENTS

In accordance with the biennial review process, the Commission should streamline its existing CEI parameters and Computer III non-structural safeguards in a number of respects. Today, U S WEST is required to comply with nine CEI parameters: interface functionality; unbundling of basic services; resale; technical

[83] In the Matter of US West Communications, Inc. Petition for Computer III Waiver, Order, 11 FCC Rcd. 1195 (1995).

characteristics; installation; maintenance and repair; end-user access; CEI availability; minimization of transport costs; and recipients of CEI. In addition, U S WEST is required to comply with four additional non-structural safeguards: the allocation of joint and common costs; network disclosure; CPNI; and non-discriminatory access to basic network services. To ensure compliance with these ONA/CEI obligations, the Commission requires the filing of a number of reports, as well as an annual affidavit.

U S WEST believes that the nine CEI parameters are fully satisfied via existing ONA non-structural safeguards, the tariffing of basic ONA services, and internal practices and, therefore, do not need to be distinct regulatory requirements. Specifically, the CEI parameters of interface functionality and technical characteristics are fully satisfied via the network disclosure safeguard and the filing of tariffs for basic ONA services. The unbundling of basic services, resale, end-user access, CEI availability, minimization of transport costs, and recipients of CEI parameters are fully satisfied through the tariffing of basic ONA services.[84] Finally, the installation, maintenance, and repair parameter is satisfied through internal processes and practices that are described in U S WEST's ONA Plans and Amendments.

U S WEST recommends that the Commission retain the non-structural safeguard requiring non-discriminatory access to basic network services. U S WEST does not address the two remaining non-structural safeguards, CPNI

[84] U S WEST's reference to tariffing includes both interstate and intrastate tariffs, and at the intrastate level includes tariffs, price lists and catalogs.

and the allocation of joint and common costs in these Comments, as these issues are being addressed in other proceedings. U S WEST recommends that existing ONA Plans be streamlined to reflect the consolidation of the ONA safeguards and CEI parameters described above. Finally, U S WEST recommends that the Commission streamline the ONA reporting requirements.

A. CEI Parameters

1. Interface Functionality

The Commission requires that, as part of its CEI offering, a carrier must make available standardized hardware and software interfaces that are able to support transmission, switching, and signaling functions identical to those utilized in the enhanced service provided by the carrier.[85] Information and technical specifications for such interfaces must be available according to the network information disclosure requirements set forth in the Commission's rules.

U S WEST's ONA plan indicates that interconnection of U S WEST's enhanced services with the basic network is premised on a general prerequisite of equality with enhanced services of competitive ESPs.[86]

In existing CEI Plans, U S WEST demonstrates compliance with this parameter by stating that all ESPs, including U S WEST's enhanced services operations, will access the network through existing standard network interfaces which are available to the public through U S WEST's network disclosure

[85] Computer III Phase I Order, 104 F.C.C.2d at 1039 ¶ 157.

procedures. No interface, signaling, abbreviated dialing, derived channels or other unique capabilities will be provided to access U S WEST's enhanced services which is not available to the public in tariffed form, or through published price lists or catalogs. If such access arrangements are to be made available to U S WEST's enhanced services operations, they will be made available to U S WEST's enhanced service competitors at the same time, in the same jurisdictions and on the same terms and conditions.

U S WEST believes that the requirement of equal interface functionality is satisfied via U S WEST's compliance with existing network disclosure requirements where the functionality of an interface is represented via a Technical Reference that governs how the service is provisioned.[87] In addition, because the interface is either a basic network service or an integral part of the basic network service which is available via tariff, it is available for use by all competing providers, at the same unbundled rates and under the same terms and conditions. Because this parameter is fully satisfied via the network disclosure safeguard and tariffing requirements, there is no need for it to be retained as a distinct obligation.

2. Unbundling of Basic Services

The Commission requires that, as part of its CEI offering, the basic services and basic service functions that underlie a carrier's enhanced service offering must be unbundled from other basic service offerings and associated with a specific rate

[86] In the Matter of U S WEST, Inc. Filing and Review of Open Network Architecture Plans, Open Network Architecture Plan of U S WEST, Inc., CC Docket No. 88-2, Phase I, filed, Feb. 1, 1988 at 336-40 ("U S WEST ONA Plan").

element in the CEI tariff.[88] Information utilized by the carrier in providing the unbundled basic services (e.g., calling number identification) that is not proprietary to its customers must be made available as part of CEI. Moreover, any options that are available to a carrier in the provision of such services or functions also must be included in the unbundled offerings.

For example, if a carrier's enhanced service utilizes digital transmission, supervisory signaling, calling number identification, and a special alert signal, such as a stutter dial tone, CEI for that service should include these basic services as a set unbundled from all other basic offerings.[89] Continuing the example, if a carrier offers an option of a stutter dial tone or a signal to a visual indicator on the customer's CPE, CEI for that service should be required to provide such an option as well. All basic network capabilities utilized by the carrier's enhanced service offerings, including signaling, switching, billing and network management, are subject to this unbundling requirement. The Commission requires that the carrier must provide such unbundled basic services to others in a form unaffected by the carrier's enhanced services operation, so that competitors can utilize such services without distortion or degradation caused by the carrier's use of them.

U S WEST's ONA Plan indicates that BSEs are reasonably unbundled from each other, and from other features and functions.[90] The BSEs offered by U S WEST

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[87] See Section VII.B.1.

[88] Computer III Phase I Order, 104 F.C.C.2d at 1040 ¶ 158.

[89] Id. at 1039 n.213.

[90] [illegible]

are features and functions which generally reside in Central Offices ("CO") and cannot be purchased in isolation. Rather, before a BSE has other than theoretical utility, it must be accessed through standard serving arrangements set forth in exchange and exchange access tariffs (i.e., BSAs under the ONA model).

In existing CEI Plans, U S WEST demonstrates compliance with this parameter by indicating that the unbundled basic services that may be used in conjunction with U S WEST's enhanced services are currently available on an unbundled basis from state or interstate tariffs, price lists or catalogs. U S WEST provides a description of services which meet these criteria and which are currently utilized to support its enhanced services offerings. U S WEST's CEI Plan also provides additional basic services utilized to support its enhanced services will be added to the Plan by way of amendment prior to their use by U S WEST's enhanced services operations. Similarly, in any jurisdiction where U S WEST will utilize any of the basic services for its enhanced services, the basic services will be made available for use by competing providers on an unbundled basis at the time they are available for use by U S WEST's enhanced services operations, and the CEI Plan will be amended to reflect this availability.

U S WEST submits that the unbundling requirement is satisfied via the tariffing of the unbundled basic feature or function. The availability of the service via tariff ensures that those basic services will be provided to all ESPs, including U S WEST's enhanced services operations, at the same unbundled rates, and under the same terms and conditions. Because this parameter is fully satisfied via the tariffing requirements, there is no need to retain it as a distinct obligation.

3. Resale

The Commission requires that a carrier's enhanced service operations obtain the basic services used in its enhanced service offerings at the carrier's unbundled tariffed rates as a means of preventing improper cost-shifting to regulated operations and anti-competitive pricing in unregulated markets.[91]

U S WEST's ONA Plan indicates that U S WEST's enhanced services operations purchase all BSEs (and other basic services) at tariffed rates where such services are offered under tariff.[92] Such "purchases" may be accomplished, where appropriate, through accounting entries made in accordance with the CAM filed by U S WEST and proper intrastate accounting rules. In cases where a basic service or BSE has been detariffed or deregulated, U S WEST adheres to the principles set forth in the CI-III Phase I Reconsideration Order pertaining to deregulated basic services in an ONA environment.

U S WEST's ONA Plan also provides that detariffed or deregulated ONA services will be offered to the public through a price list which is made publicly available, and U S WEST's enhanced services will obtain such ONA services under prices, terms and conditions specified in the price list that are equally available to other ESPs. For new detariffed or deregulated ONA services developed initially for use in the provision of a U S WEST enhanced service, the notice provision pertaining to new ONA offerings applies (i.e., advance public notice will be given of the ONA services to be utilized by U S WEST's enhanced service). This notice

[91] Computer III Phase I Order, 104 F.C.C.2d at 1040 ¶ 159.

includes the price list information specifying the terms and conditions under which the ONA services may be purchased -- which will likewise apply to U S WEST's own enhanced service's use of each service.

In existing CEI Plans, U S WEST complies with this parameter by confirming that it "purchases" basic services at their unbundled, tariffed rates.

As with the unbundling of basic services requirement, U S WEST submits that the resale requirement is satisfied via the tariffing of the basic feature or function. The availability of the services via tariff ensures those services will be provided to all ESPs, including U S WEST's enhanced services operations, at the same unbundled rates, and under the same terms and conditions. Because this parameter is fully satisfied via the tariffing requirements, there is no need to retain it as a distinct obligation.

4. Technical Characteristics

The Commission requires that, as part of its CEI offering to enhanced service competitors, a carrier must provide basic services with technical characteristics that are equal to those of the basic services it utilizes for its own enhanced services.[93] Such characteristics include, but are not limited to, transmission parameters (e.g., bandwidth, bit rates), quality (e.g., bit error rates, delay distortions), and reliability (e.g., mean time between failures).

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[92] U S WEST ONA Plan at 345-47.

[93] Computer III Phase I Order, 104 F.C.C.2d at 1041 ¶ 160. The Computer III Rules also require that enhanced service competitors must be provided with basic services with "technical characteristics equal to those of the basic services it utilizes for its own enhanced services." U S WEST ONA Plan at 347.

U S WEST's ONA Plan states that BSEs set forth in U S WEST's Plan are equally accessible to U S WEST's enhanced services and enhanced service competitors -- that is, the customer of the ESP will not perceive any difference in BSE service quality. In addition, U S WEST's policies regarding equal end-user access are equally applicable to this CEI parameter.

In existing CEI Plans, U S WEST demonstrates compliance with this parameter by stating that interconnection to U S WEST's enhanced services is through existing standard network interfaces. The facilities provided to U S WEST's enhanced services and to competitive enhanced services fully comply with the Commission's parameters for technical equality (i.e., no user-perceived qualitative differences and no systematic differences in measured quality).

U S WEST's procedures for processing and assigning circuits are described in detail in its ONA Plan[94] and in its Amendment to its ONA Plan.[95] These procedures assure that there can be no systematic discrimination in circuit assignment based upon the customer or proposed use. U S WEST's amended ONA Plan indicates that, pursuant to Commission requirements, U S WEST Communications, Inc. files an annual affidavit attesting that the installation procedures as described in the ONA Plan have been followed and that U S WEST personnel did not discriminate in the quality of service provided.[96] This affidavit has been filed since 1990.

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[94] See U S WEST ONA Plan at 396-400.

[95] See Amendment to Open Network Architecture Plan of U S WEST, Inc., CC Docket No. 88-2, Phase I, filed Mar. 10, 1988 at 1-7 ("U S WEST ONA Plan Amendment").

[96] Phase II Reconsideration Order, 3 FCC Rcd. at 1160 ¶ 76.

As with interface functionality, U S WEST believes that the equal technical characteristics parameter is addressed through U S WEST's use of Technical References and industry standards in the development and deployment of ONA services and network interfaces. These Technical References and industry standards are reflected in the network disclosure of new interfaces. The network disclosure safeguard, therefore, is one means by which this parameter is satisfied. In addition, because the underlying basic network services are available via tariff, all competing providers are assured of receiving the same technical characteristics through those basic service offerings. Because this parameter is fully satisfied via the network disclosure safeguard and tariffing requirements, there is no to retain it as a distinct obligation.

5. Installation, Maintenance and Repair

The Commission requires that the time periods for installation, maintenance and repair of the basic services and facilities included in a CEI offering must be the same as those the carrier provides to its own enhanced service operations.[97]

U S WEST's ONA Plan Amendment states that due dates for routine installation orders are based on standard intervals for the types and quantities of services required. These standard timeframes are determined by the type, quantity, and complexity of the services ordered, not by who requests the service. The respective due date standards reside in the practices of the appropriate Business, Residence, and Vendor Service Centers, and are applied consistently to

[97] Computer III Phase I Order, 104 F.C.C.2d at 1041 ¶ 161.

all customers who order service. Maintenance intervals are likewise based upon standard guidelines (i.e., for type of trouble) which are applied to all customers without regard to customer affiliation.

In existing CEI Plans, U S WEST demonstrates compliance with this parameter by referring to its ONA Plan for a detailed description of the installation and maintenance procedures.[98] U S WEST also refers to U S WEST's Reply Comments in CC Docket No. 88-2, Phase I,[99] and U S WEST's Response to the ONA Order.[100] This amendment, as clarified in the Reply Comments, together with the initial U S WEST ONA Plan, demonstrates that U S WEST Communications, Inc. cannot discriminate between its enhanced services and those offered by others.[101]

This requirement is satisfied via U S WEST's current non-discriminatory provisioning, maintenance and repair practices -- developed initially under the non-discriminatory provisioning non-structural safeguard established under the CPE Order, and later evolved under the ONA requirements. U S WEST files an annual affidavit attesting that the installation procedures as described in its ONA Plan have been followed and that U S WEST personnel did not discriminate in the quality of service provided.[102] In addition, U S WEST files reports with the Commission demonstrating that U S WEST does not discriminate in favor of its

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[98] See U S WEST ONA Plan Amendment at 1-7.

[99] U S WEST's Response, CC Docket No. 88-2, filed July 16, 1990, at 4, Appendix B.

[100] See U S WEST's Response, CC Docket No. 88-2, filed May 19, 1989, at 180-83.

[102] U S WEST ONA Plan Amendment at 396-401.

own enhanced services operations relative to the time periods for installation, maintenance and repair of ONA services and facilities.[103] Because this parameter is fully satisfied via internal practices that are described in U S WEST's ONA Plan and Amendment, there is no need to retain it as a distinct obligation.

6. End-User Access

The Commission requires that, if a carrier offers end users the ability to use abbreviated dialing or signaling to activate or access the carrier's enhanced offerings, it must provide as part of its CEI offering the same capabilities to end-users of all enhanced services that utilize the carrier's facilities.[104] Similarly, end users must have equal opportunities to access basic facilities through derived channels, such as Data-Over-Voice offerings, whether they use the enhanced service offerings of the carrier or those of a competitor to do so.

U S WEST's ONA Plan states that, equal end-user access essentially means that if a carrier-based enhanced service is available to end users through a special network capability, such capability for access must be available to end-user customers of enhanced service competitors.[105]

In existing CEI Plans, U S WEST demonstrates compliance with this parameter by stating that end users will access U S WEST's enhanced services through existing tariffed services. Access is equal to that used by end users to reach

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[103] See Section VII.B.2.

[104] Computer III Phase I Order, 104 F.C.C.2d at 1041 ¶ 162.

[105] U S WEST ONA Plan at 348-51.

any other provider's enhanced service (through U S WEST's tariffed or price listed services), at the same price and in full compliance with Commission requirements.

As with the unbundling of basic services and resale parameters discussed above, U S WEST submits that the end-user access parameter is satisfied by the tariffing of services utilized in U S WEST's enhanced services -- whether they be for the offering of the enhanced service, or for the end user's utilization of such enhanced service. The availability of the services via tariff ensures such services are available to all ESPs and their end users. Because this parameter is fully satisfied via the tariffing requirements, there is no to retain it as a distinct obligation.

7. CEI Availability

The Commission requires that a carrier's CEI offering must be fully operational and available on the date that it offers its corresponding enhanced service to the public.[106] In addition, the carrier must specify a reasonable time prior to the availability date during which prospective users of CEI, such as enhanced services competitors, can utilize the CEI facilities and services for purposes of testing their enhanced service offerings. This testing opportunity must be provided early enough to ensure a reasonable opportunity for resolution of technical problems.[107]

[106] Computer III Phase I Order, 104 F.C.C.2d at 1041 ¶ 163.

[107] U S WEST understands the Commission generally considers 90 days to be a "reasonable opportunity" time period.

U S WEST's ONA Plan provides that the offering of a new or modified network interface will be treated under the network disclosure rules.[108] As noted therein, standard network procedures provide an opportunity for testing of new interfaces, and these testing opportunities are available on a general basis. U S WEST's Plan does not propose any integration of basic and enhanced services, and therefore there is no special "comparably efficient interconnection interface" (or new access arrangements). The network interfaces used by U S WEST for provision of enhanced services are available to the general public. In addition, new BSEs used for the provision of enhanced services by U S WEST's enhanced service operations are publicly announced three (3) months prior to being used by U S WEST's enhanced services operations.

In existing CEI Plans, U S WEST demonstrates compliance with this parameter by indicating that U S WEST's enhanced services will utilize only access arrangements in a given jurisdiction that are also available to competitive ESPs. In jurisdictions where access arrangements are not currently available, U S WEST will make testing capability available to competitors at the same time that such capability is available to its own on-line database access services operations. No basic service will be utilized by U S WEST's enhanced services except pursuant to Commission rules.

U S WEST seeks clarification of the timing requirement for testing a new CEI offering. If U S WEST implements a new access arrangement on an expedited

[108] U S WEST ONA Plan at 352-53.

basis using the Commission's abbreviated network disclosure process, the Commission should clarify that it is reasonable for the testing requirement to be completed coincident with the completion of the network disclosure requirements. This will ensure that there is no unnecessary regulatory delay in provisioning U S WEST's enhanced service to the public. U S WEST will continue to announce the availability of testing to ESPs on or before the commencement of the network disclosure, as appropriate.

As with the unbundling of basic services, resale, and end-user access parameters discussed above, U S WEST believes that the CEI availability parameter is satisfied by the tariffing of basic ONA services. The availability of the services via tariff ensures those services will be provided to all ESPs, including U S WEST's enhanced services operations, at the same unbundled rates, and under the same terms and conditions. Because the testing requirement associated with this parameter is fully satisfied via network practices described in U S WEST's ONA Plan and the tariffing of basic services satisfies the remaining requirements, there is no need to retain this parameter as a distinct obligation.

8. Minimization of Transport Costs

The Commission does not impose mandatory collocation requirements on carriers subject to CEI, but it does require such carriers to provide others with interconnection facilities that minimize such transport costs.[109] The Commission requires carriers to demonstrate in their CEI Plans what steps they will take to

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[109] Computer III Phase I Order, 104 F.C.C.2d at 1042 ¶ 164.

reduce transport costs for competitors. Further, the Commission directs such carriers to work with CEI subscribers in good faith to develop techniques to minimize such costs.

Under ONA, the concept of "virtual collocation" allows U S WEST's enhanced services to access the switched network via standard tariff arrangements by which collocated (but not integrated) U S WEST's enhanced services will access the network "as if" located off-premises.[110] U S WEST's collocated enhanced services operations, therefore, access the network via tariffed services of the type and at the rate available to all providers of the same or materially similar enhanced services. Conversely, whatever access rate is available to U S WEST's enhanced service operations also is available to competitive ESPs (subject, of course, to the caveat that an interstate provider will need to purchase under the interstate, not intrastate tariffs, and vice versa).

Under the virtual collocation parameter, where the appropriate access arrangement includes distance sensitive pricing such as is typically found in dedicated access arrangements, U S WEST will impute to its collocated enhanced services operations a two-mile band rate for distance-sensitive transmission services.[111] However, U S WEST will impute a two-mile rate only in the case of a distance-sensitive transmission service collocated in a U S WEST CO. In the case of an enhanced service which is not physically collocated in a CO (i.e., located in a different building), U S WEST would, where distance-sensitive transmission

[110] U S WEST ONA Plan at 353-59.

facilities are utilized, simply pay or impute the tariffed rate. Technical interconnection specifications are functionally identical in all cases.

In existing CEI Plans, U S WEST demonstrates compliance with this parameter by stating that its enhanced services operations obtains basic services from existing tariffs, price lists or catalogs and is, therefore, purchasing access connections at the same rates as are available to unaffiliated ESPs. The facilities provided to U S WEST's enhanced services operations and to competing providers fully comply with the Commission's parameters for technical equality (i.e., no user-perceived qualitative differences and no systematic differences in measured quality).[112] U S WEST charges itself the tariffed or price-listed rate for all basic services -- using the mileage band that includes two miles when the enhanced service is located in a U S WEST CO, and the tariffed rate in those instances where the enhanced service is located in a building other than a CO. U S WEST may utilize services offered under its expanded interconnection tariffs, in which case its enhanced services will pay the expanded interconnection rates, even if its enhanced service equipment is located within a U S WEST CO.

The minimization of transport costs parameter is satisfied by the tariffing of basic ONA services and the application of the two-mile rule as described in U S WEST's ONA Plan, as amended. U S WEST's response to this parameter ensures that even services utilized by U S WEST within the CO for interconnection are available at the same unbundled rates and under the same terms and

[111] U S WEST 1989 ONA Plan Amendment at 138.